IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1607 OF 2005

IN

CRIMINAL APPLICATION NO.4663 OF 2004

Shri Nareshchandra M.Rathod & Ors. ...Applicants

Versus

Mr.Palesh Jain @ Dhakad Bherulal

Jain & Ors. ...Respondents

.....

Mr.A.P.Mundargi with Mr.Prakash Naik for Applicants.

Mr.A.H.H.Ponda for Respondents 1 & 2.

Mr.A.S.Gadkari, A.P.P. for Respondent No.3.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 12, 2005.

P.C.

1. Heard Counsel for the parties.

2. This is one more round of litigation brought before this Court in respect of small controversy before the Trial Court regarding production of property, possession whereof, has

been handed over to the Applicants under Court order. The said property is valuable property. By order dated November 23, 2004 in Criminal Application No.4663 of 2004, direction was given to the Trial Court to preserve the property, and if necessary, to keep it in the treasury/safe and make available on the actual date of hearing, as and when required and if it is not possible to do so, to ensure compliance of the direction that the Applicants ought to produce the muddemal property in Court on fixed date, at the time of hearing of the trial.

3. Later on, matter went before the Trial Court, who in turn, passed certain directions which were put in issue once again before this Court by way of Criminal Application No.644 of 2005 which was eventually disposed of on February 10, 2005.

4. During the course of arguments of the abovesaid Application, it was argued on behalf of the private Respondent before this Court that the situation such as present one, can be taken care of, by observing the procedure provided for, by

fourth paragraph of Rule 69 of the Criminal Manual. As I found substance in the argument, direction was given to the Magistrate to pass appropriate orders in that behalf, as can be discerned from paragraph 4 of the order dated February 10, 2005.

5. In terms of the said direction, Magistrate has now passed order on 2nd March 2005, requiring production of the property on or before 6th March 2005 and to take consequential steps in terms of the observations in order dated 2nd March 2005 within 15 days from the date of the order. Once again, the matter has been brought before this Court. On this occasion, by the Applicants, who are in possession of the said property under the orders of the Trial Court.

6. According to the Applicants, the question of invoking provisions of fourth paragraph of Rule 69 of the Criminal Manual, does not arise, as that applies only to dormant cases. This submission, in effect, is inviting me to reconsider my decision as contained in order dated February 10, 2005, in which, I have issued directions to the Magistrate,

on the assumption that the fourth paragraph of Rule 69 of the Criminal Manual, can be invoked by the Magistrate.

7. Moreover, it is fairly accepted by the Counsel for the Applicants that provision such as 4th Paragraph of Rule 69 of the Criminal Manual has no application to the fact situation of the present case, was not contested on behalf of the Applicants, when the matter was canvassed before me on February 10, 2005.

8. Viewed in this perspective, I see no substance in this Application, as it is not open for this Court to review its own order in view of the express provision in the Criminal Procedure Code. Hence, dismissed.

9. At this stage, it is brought to my notice that the property was required to be deposited by today, as was required by the subsequent orders passed by the Trial Court.

10. As the matter has been disposed of today

at 4.45 p.m., the direction cannot be complied with today. In the circumstances, the Applicants are directed to produce the property before the Investigating Officer in terms of order dated 2nd March 2005 with direction to the concerned Authorities to ensure that proper panchanama is drawn in the presence of all concerned and the same is preserved and kept in safe of Sessions Court, Greater Bombay and receipts in that behalf be executed. That be done before 4.45 p.m. tomorrow i.e. 13th April 2005.

11. At this stage, Mr.Mundargi prays that the Applicants are interested in carrying the matter before the Apex Court, for which reason, operation of this direction and the direction passed by the lower Court be stayed for a reasonable period. I see no propriety in accepting this request.

12. As per the directions, the property will be taken into custody and kept in safe of the Sessions Court by responsible persons. Even if the Applicants carry the matter to Supreme Court and eventually succeed in those proceedings, the

property can always be returned to the Applicants in the form, in which it has been taken into custody. Accordingly, I see no propriety in staying the operation of this order as prayed by Mr.Mundargi. This course I am adopting also because of the apprehension as was expressed before the lower Court that the property is valuable property and is likely to be tampered. The direction which has been passed by the Trial Court, therefore, meets the ends of justice.

13. Application disposed on the above terms.

A.M.KHANWILKAR, J.